

FCC MAIL SECTION

Nov 3 3 00 PM '94

Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED

MM Docket No. 93-158

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Hazlehurst, Utica and
Vicksburg, Mississippi)

RM-8239

RM-8317

REPORT AND ORDER
(Proceeding Terminated)**Adopted: October 26, 1994; Released: November 3, 1994**

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making and Order to Show Cause*, 8 FCC Rcd 4080 (1993), issued in response to a petition filed by St. Pe' Broadcasting ("St. Pe'"). St. Pe' requested the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of its license for Sta-

tion WJXN(FM) to specify operation on the higher class channel. Crossroads Communications, Inc. ("Crossroads") filed a request for Extraordinary Relief to which St. Pe' filed a response.¹ Willis Broadcasting Corporation ("Willis") filed comments supporting the substitution at Utica.² St. Pe' filed a counterproposal.³ Late-filed comments were received from Donald B. Brady ("Brady").⁴ Reply comments were filed by St. Pe', Crossroads, Brady and Willis.⁵

2. The *Notice* proposed the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of the license for Station WJXN(FM) accordingly. To accommodate the upgrade, St. Pe' also requested the substitution of Channel 267A for Channel 266A at Vicksburg, Mississippi, and modification of the license for Station WBBV-FM and substitution of Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and modification of the license for Station WMDC-FM. An *Order to Show Cause* was issued to Bishop Broadcasting, Inc. ("Bishop"), the licensee of Station WBBV-FM, Vicksburg, Mississippi, and to Copiah County Broadcasting Company, licensee of Station WMDC-FM, Hazlehurst, Mississippi, to show cause why their licenses should not be modified accordingly. Although Station WMDC-FM requested and was granted authority to operate on Channel 265C3, effective June 15, 1990, the station has never filed a Form 301 for Channel 265C3. *See Report and Order*, (MM Docket No. 89-411), 5 FCC Rcd 2817 (1990). On March 16, 1993, the Commission sent a letter to Copiah County Broadcasting Company, the licensee of Station WMDC-FM, advising it that unless an FCC Form 301 application for a construction permit for Class C3 facilities is filed within 30 days of the date of the letter, it would be made a party to the rulemaking proceeding and the allotment could be down-

¹ Crossroads filed the request for extraordinary relief in this proceeding because its upgrade in MM Docket No. 91-131 has been stayed with the filing of a Petition for Reconsideration by St. Pe' in that proceeding. *See* 7 FCC Rcd 5477 (1992).

Docket No. 91-131 was issued in response to a petition filed by Donald B. Brady proposing the allotment of Channel 246A to Kings, Mississippi, as that community's first local service. However, the area known as Kings has been annexed into the community of Vicksburg, Mississippi, and is no longer a separate community according to the 1990 U.S. Census. We note, that even if Kings were a separate community, Donald B. Brady's expression of interest for the allotment at Kings was received after the cut-off dates established in the proceeding and would not have been considered even if a channel could be allotted to Kings. Crossroads filed a counterproposal in the proceeding which resulted in the substitution of Channel 247C3 for Channel 248A at Flora, Mississippi, and modification of its construction permit for Station WXFJ(FM) to specify operation on Channel 247C3. St. Pe' also filed a counterproposal requesting the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, which was found to be unacceptable. St. Pe' then filed the petition for reconsideration in Docket 91-131 and, at the same time, filed a new petition for rule making which resulted in the issuance of the *Notice* in this proceeding.

² An assignment of license for Station WJXN(FM), Utica, Mississippi, was granted on September 14, 1993, and consummated on October 21, 1993 (BALH-930714GE). Willis Broadcasting Corporation is the new licensee of Station WJXN(FM).

³ Public notice of the counterproposal was given on August 31, 1993, Report No. 1962 (RM-8317). The Public Notice indicated

that the counterproposal constitutes an incompatible channel swap and is thus protected from competing expressions of interest.

⁴ The *Notice* incorrectly indicated that comments expressing an interest in the use of Channel 265C3 would be accepted. The upgrade at Utica and substitution of a channel at Hazlehurst constitutes an incompatible channel swap. *See Blair, Nebraska, et al*, 8 FCC Rcd 4086 (1993). Therefore, the comments filed by Donald B. Brady are not acceptable and no further consideration will be given to his comments or responsive comments. We do note, however, that Brady's comments were not filed in accordance with Section 1.420(a) and (c) of the Commission's Rules. Moreover, they were received after the cut-off date and were not accompanied by a motion to accept. Although it appears that Brady's comments were received in the Commission on the comment date by means of electronic transmission, they were received by the Office of the Secretary one day after the established comment period in this proceeding. It is the obligation of the party submitting comments to ensure that documents are delivered to the Office of the Secretary at the Commission on time. It appears that Brady attempted to advance his comments to correspond with the cut-off date in this proceeding and was obligated to adhere to the requirements set forth in the *Notice*. Finally, Brady failed to state his intention to reimburse Station WBBV-FM, Vicksburg and Station WMDC-FM, Hazlehurst, for expenses incurred in changing channels to accommodate the allotment of Channel 265C3 at Utica.

⁵ Commission Rule 1.405(c) states that no additional pleadings may be filed unless specifically requested or are authorized. We do not believe the public interest would be served by the acceptance of the additional comments filed by Brady, St. Pe', Crossroads and Willis.

graded. Further, the licensee was notified that extensions of the 30 day period, during which the construction permit application must be filed, would not be granted. Copiah County Broadcasting Company did not file a Form 301 to upgrade Station WMDC-FM to Class C3 facilities. Therefore, Copiah County Broadcasting Company is deemed to have abandoned its interest in the Class C3 allotment. As indicated in the *Notice*, upon termination of this proceeding, we shall modify the license of Station WMDC-FM to specify operation on Channel 265A or Channel 225A depending on the action taken in this proceeding.

3. St. Pe' counterproposed the substitution of Channel 265C2 for Channel 225A in lieu of the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, and modification of its license for Station WJXN(FM) accordingly. Although St. Pe' continues to support the allotment of Channel 265C3 at Utica, it has now determined that Channel 265C2 can be allotted to Utica, providing the community and surrounding area with expanded service. St. Pe' further requests the substitution of Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and substitution of Channel 267A for Channel 266A at Vicksburg, Mississippi, to accommodate Channel 265C2 at Utica. St. Pe' notes that while the stations at Vicksburg and Hazlehurst have been precluded from full six kilowatt operation, the proposed substitute channels will allow for six kilowatt operation providing expanded service to those communities. According to St. Pe', the proposed substitutions constitute an incompatible channel swap and no competing expressions of interest may be entertained for Channel 265C2 or Channel 265C3, as originally proposed, at Utica, Mississippi. St. Pe' reiterates its pledge that upon issuance of an *Order* implementing the requested substitutions, it will undertake to reimburse the licensees of Stations WMDC(FM), Hazlehurst, Mississippi, and Station WBBV(FM), Vicksburg, Mississippi, for their costs in implementing their respective changes in frequency in accordance with Commission policy.

4. Based on the above information and in response to St. Pe's counterproposal, we believe the public interest would be served by substitution of Channel 265C2 for Channel 225A at Utica, Mississippi. A staff analysis indicates that St. Pe's proposals for Channel 265C3 and Channel 265C2 do constitute an incompatible channel swap and other expressions of interest should not have been solicited for Channel 265C3 in the *Notice*.⁶ Further analysis has determined that Channel 265C2 can be allotted to Utica, Mississippi, at St. Pe's specified site.⁷ In accordance with Section 1.420(g) of the Commission's Rules, we have authorized a modification of the license for Station WJXN(FM), Utica, Mississippi. To accommodate the upgrade at Utica, we shall substitute Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and modify the license for Station WMDC-FM to specify operation on Channel 225A.⁸ We shall also

substitute Channel 267A for Channel 266A at Vicksburg, Mississippi, and modify the license for Station WBBV-FM to specify operation on Channel 267A.⁹

5. Bishop Broadcasting, Inc., licensee of Station WBBV-FM, Vicksburg, Mississippi, and Copiah County Broadcasting Company, licensee of Station WMDC-FM, Hazlehurst, did not respond to the *Order to Show Cause* as to why their respective licenses should not be modified to specify operation on Channels 267A and 225A. Accordingly, pursuant to Section 1.87 of the Commission's Rules, Bishop Broadcasting and Copiah County Broadcasting Company are deemed to have consented to the proposed modification.

6. Commission policy requires reimbursement to affected stations for the reasonable costs associated with changing frequencies. See *Circleville and Columbus, Ohio*, 8 FCC Rcd 2d 159 (1967). St. Pe' has stated its intention to reimburse Bishop Broadcasting, Inc. and Copiah County Broadcasting Company for all reasonable expenses incurred in changing their frequencies to the new channels.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **December 19, 1994**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Hazlehurst, Mississippi	225A
Utica, Mississippi	265C2
Vicksburg, Mississippi	254C1, 267A, 294C

8. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WJXN(FM), Utica, Mississippi, IS MODIFIED to specify operation on Channel 265C2, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

⁶ The *Notice* in MM Docket No. 94-2 proposed the allotment of Channel 282A to Hazlehurst. See 9 FCC Rcd 663 (1994). Although Channel 282A can be allotted to Hazlehurst, the channel cannot be utilized at the existing site of Station WMDC-FM. Since it is Commission policy not to require a station to involuntarily relocate its transmitter site, absent consent from the permittee or licensee, we did not consider the use of Channel

282A by Station WMDC-FM at Hazlehurst in our analysis.

⁷ The coordinates for Channel 265C2 at Utica are 32-04-01 and 90-20-14.

⁸ The coordinates for Channel 225A at Hazlehurst are 31-53-34 and 90-24-08.

⁹ The coordinates for Channel 267A at Vicksburg are 32-21-34 and 90-50-08.

9. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Station WBBV-FM, Vicksburg, Mississippi, IS MODIFIED, to specify operation on Channel 267A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-890828KD except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-890828KD, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, That pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the construction permit for Station WMDC-FM, Hazlehurst, Mississippi, IS MODIFIED, to specify operation on Channel 225A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-880803LK except for the channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with License BLH-880803LK, except for the channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

11. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Copiah County Broadcasting Station WMDC-FM 902 Highway 51 North Hazlehurst, Mississippi 39083	Bishop Broadcasting, Inc. Station WBBV-FM Rte 1, Box 159A Vicksburg, Mississippi 39180
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12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, St. Pe' Broadcasting, licensee of Station WJXN(FM), is required to submit a rule making fee in addition to the fee required for the applications to effect the upgrade.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau